

95TH CONGRESS
2D SESSION

H. R. 10749

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1978

Mr. WYDLER introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To provide policies, methods, and criteria for the acquisition of property and services by executive agencies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE; TABLE OF CONTENTS

4 SECTION 1. (a) SHORT TITLE.—This Act may be cited
5 as the “Federal Acquisition Act of 1977”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Declaration of policy.

Sec. 3. Definitions.

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NEGOTIATION

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- Sec. 510. Maintenance of regulations.

TITLE VI—DELEGATION OF AUTHORITY

- Sec. 601. Delegation within an executive agency.
- Sec. 602. Joint acquisitions.

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- Sec. 701. Purpose.
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1

DECLARATION OF POLICY

2

SEC. 2. (a) FINDINGS.—The Congress hereby finds

3

that—

1 (1) the laws controlling Federal purchasing have
2 become outdated, fragmented, and needlessly incon-
3 sistent;

4 (2) these deficiencies have contributed to signifi-
5 cant inefficiency, ineffectiveness, and waste in Federal
6 spending;

7 (3) the Commission on Government Procurement
8 has found and recommended that a new consolidated
9 statutory base is needed;

10 (4) further, existing statutes need to be modernized
11 to focus on effective competition and new technology
12 in that—

13 (A) national productivity rests on a base of
14 competitive industry applying new technology in its
15 goods and services; and

16 (B) Federal spending practices can encourage
17 the Nation's business community by stimulating
18 effective competition and the application of new
19 technology.

20 (b) POLICY.—It is hereby declared to be the policy of
21 the United States that the acquisition of property and serv-
22 ices by the Federal Government shall be performed so as
23 to—

24 (1) best meet public needs at the lowest total cost;

25 (2) maintain the independent character of private

1 enterprise by substituting for regulatory controls the in-
2 centives and constraints of effective competition;

3 (3) encourage innovation and the application of
4 new technology as a first consideration by stating public
5 needs so that prospective suppliers will have maximum
6 latitude to exercise independent business and technical
7 judgments in offering a wide range of competing
8 alternatives;

9 (4) promote both new and small business by per-
10 mitting all qualified and interested sources to compete
11 for and grow through Government contracts;

12 (5) provide private contractors with the opportu-
13 nity to earn a profit on Government contracts commensurate with the contribution made to meeting public
14 needs and with comparable profit opportunities available
15 in other markets requiring investments, risks, and skills
16 similar to the technical and financial risks undertaken;

17 (6) safeguard the public interest through individual
18 accountability of public officials and maximum use
19 of effective competition; and

20 (7) further, to achieve these goals, it is the policy
21 of the United States to rely on and promote effective
22 competition, the efforts of several sellers acting independently of each other, to respond to a public need by
23 creating, developing, demonstrating or offering products
24 creating, developing, demonstrating or offering products
25 creating, developing, demonstrating or offering products

1 or services which best meet that need, whether that need
2 is expressed as an agency mission need, a desired func-
3 tion to be performed, performance or physical require-
4 ments to be met, or some combination of these. Effective
5 competition is present when there is—

6 (A) timely availability to prospective sellers
7 of information required to respond to the public
8 needs;

9 (B) independence of action by buyer and
10 seller;

11 (C) availability to the Government of alterna-
12 tive offers that provide a range of concept, design,
13 performance, price, lifetime ownership costs, service
14 and/or delivery;

15 (D) absence of bias or favoritism in the solici-
16 tation, evaluation, and award of contracts; and

17 (E) ease of competitive entry for new and
18 small sellers.

19 DEFINITIONS

20 SEC. 3. For purposes of this Act—

21 (a) The term “acquisition” means any relationship en-
22 tered into to obtain property or services for the direct benefit
23 or use of an executive agency through purchase, lease, or
24 barter to meet a public need, whether the property or services
25 are already in existence or must be created, developed,

1 demonstrated, and evaluated. Acquisition includes such re-
2 lated functions as determination of the particular public need;
3 solicitation; selection of sources; award of contracts; contract
4 financing and contract performance.

5 (b) The term "executive agency" means an executive
6 department as defined by section 101 of title 5, United
7 States Code; an independent establishment as defined by
8 section 104 of title 5, United States Code (except that it
9 shall not include the General Accounting Office); a mili-
10 tary department as defined by section 102 of title 5, United
11 States Code; and the United States Postal Service;

12 (c) The term "agency head" means the head of an
13 executive agency as defined in subsection (b).

14 (d) The term "head of a procuring activity" means
15 that official, intermediate between the Agency head and the
16 contracting officer, who has the responsibility for super-
17 vision and direction of the procuring activity.

18 (e) The term "property" includes personal property
19 and leaseholds and other interests therein, but excludes real
20 property in being and leaseholds and other interests therein.

21 (f) The term "services" means all services, including
22 administrative, support-type, and professional.

23 (g) The term "total cost" means all resources con-
24 sumed or to be consumed in making an acquisition to
25 achieve an end purpose; and may include all direct, in-

1 direct, recurring, nonrecurring, and other related costs in-
2 curred, or estimated to be incurred in design, development,
3 production, operation, maintenance, disposal, training, and
4 support of an acquisition over its useful life span, wherever
5 each factor is applicable.

6 (h) The term "price data" means actual prices pre-
7 viously paid, contracted, quoted or proposed and the related
8 dates, quantities, and item descriptions existing up to a
9 time as close as practicable to any new agreement on price.

10 (i) The term "protest" means a challenge to the
11 solicitation, proposed award, or award of a contract made
12 by an executive agency for the acquisition of property or
13 services.

14 TITLE I—ACQUISITION METHODS AND
15 REGULATORY GUIDANCE

16 ACQUISITION METHODS

17 SEC. 101. (a) An executive agency shall acquire prop-
18 erty or services in accordance with the policies specified in
19 section 2 of this Act by utilizing—

20 (1) the competitive sealed bids method as pro-
21 vided in title II of this Act; or

22 (2) the competitive negotiation method, as pro-
23 vided in title III of this Act; or

24 (3) the competitive small purchase method as pro-
25 vided in title IV of this Act.

1 (b) These methods of acquiring property or services
2 are equally valid alternatives and shall be selected on the
3 basis of the nature of the product or service being acquired,
4 the circumstances of the acquisition, and other criteria as set
5 forth in this Act or as may be established by the Adminis-
6 trator of the Office of Federal Procurement Policy.

7 REGULATORY COMPLIANCE

8 SEC. 102. (a) The Administrator of the Office of Fed-
9 eral Procurement Policy is authorized and directed, pursuant
10 to the authority conferred by Public Law 93-400 and sub-
11 ject to the procedures set forth in such public law—

12 (1) within two years after the date of enactment
13 of this Act, to promulgate a single, simplified, uniform
14 Federal regulation implementing the policies and proce-
15 dures prescribed in this Act and to establish procedures
16 for insuring compliance with such provisions by all
17 executive agencies; and

18 (2) to make periodic studies of the use of the
19 acquisition methods prescribed by this Act in order to
20 determine whether agency compliance with this Act has
21 been efficient and effective.

22 (b) The Administrator of the Office of Federal Procure-
23 ment Policy shall include in his annual report required under
24 section 8 of Public Law 93-400 a report of his activities

1 plementation of and compliance with the requirements of
2 this Act; specific reductions in the use of Federal specifica-
3 tions pursuant to sections 202 and 302 of this Act; and
4 recommendations for revisions in this Act or any other pro-
5 vision of law.

6 TITLE II--ACQUISITION BY COMPETITIVE

7 SEALED BIDS

8 CRITERIA FOR USE

9 SEC. 201. The competitive sealed bids method should
10 be used in the acquisition of property and services when—

11 (1) the anticipated total contract price exceeds the
12 amount specified in title IV of this Act for use of the
13 competitive small purchase procedures method; and

14 (2) the public need can be practicably defined in
15 terms not restricted by security or proprietary design;
16 and

17 (3) the private sector industrial base will provide a
18 sufficient number of qualified suppliers willing to com-
19 pete for and able to perform the contract; and

20 (4) suitable products or services have been fully
21 developed and previously supplied in comparable forms
22 so to warrant the award of a fixed price contract to a
23 successful bidder selected primarily on the basis of price;
24 and

25 (5) the time available for acquisition is sufficient

1 to prepare the purchase description and to carry out the
2 requisite administrative procedures; and

3 (6) the property or service is to be acquired and/
4 or used within the limits of the United States and its
5 possessions; and

6 (7) the price for the property or service has not
7 been established by or pursuant to law.

8 INVITATION FOR SEALED BIDS

9 SEC. 202. (a) The invitation for sealed bids shall be
10 formally advertised in such a way that—

11 (1) the time prior to opening the bids will be suf-
12 ficient to permit effective competition; and

13 (2) the purchase description will be accessible to
14 all interested potential bidders, except where restricted
15 to bidders qualified under a duly authorized set-aside
16 program.

17 (b) The invitation shall include a description of the
18 method to be used in evaluating bids, including factors other
19 than price.

20 (c) To the extent practicable and consistent with needs
21 of the Agency, purchase descriptions shall be stated in func-
22 tional terms to permit a variety of distinct products or serv-
23 ices to qualify, or, when a particular type of product or serv-
24 ice must be designated, in terms of performance specifica-

1 tions which stipulate a range of acceptable characteristics or
2 minimum standards.

3 (d) The preparation and use of definitive product speci-
4 fications in a purchase description shall be subject to prior
5 approval by the Agency head. Such approval shall include
6 written justification, to be placed in and made a part of the
7 official contract file, delineating the circumstances which pre-
8 clude the use of functional or performance specifications and
9 which require the use of detailed product specifications in
10 the purchase descriptions.

11 (e) Where the use of functional or performance specifi-
12 cations make it impracticable to plan for award primarily
13 on the basis of price, the contracting officer may request the
14 submission of unpriced technical proposals and subsequently
15 issue an invitation for sealed bid limited to those offerors
16 whose technical proposals meet the standards set forth in
17 the purchase description.

18 EVALUATION, AWARD, AND NOTIFICATIONS

19 SEC. 203. (a) All bids shall be opened publicly at the
20 time and place stated in the invitation.

21 (b) Award shall be made to the responsible bidder
22 whose bid conforms to the invitation and is most advan-
23 tageous to the Government, price and other factors
24 considered.

1 (c) Notice of such award shall be made in writing
2 by the contracting officer with reasonable promptness and
3 all other bidders shall be appropriately notified.

4 TITLE III—ACQUISITION BY COMPETITIVE

5 NEGOTIATION

6 CRITERIA FOR USE

7 SEC. 301. The competitive negotiation method may be
8 used in the acquisition of property and services when—

9 (1) the anticipated total contract price exceeds
10 the amount specified in title IV of this Act for use of
11 the competitive small purchase procedures method; and

12 (2) the acquisition does not meet the criteria
13 established pursuant to section 101 (b) or as set forth
14 in section 201 for use of competitive sealed bids.

15 SOLICITATIONS

16 SEC. 302. (a) Solicitations for offers shall be made
17 from a sufficient number of qualified sources so as to obtain
18 effective competition and shall be publicized in accordance
19 with section 8 (c) of the Small Business Act, with copies
20 of the solicitation to be provided to other interested sources
21 upon request.

22 (b) (1) When price is not expected to be the deciding
23 factor in making an award, the solicitation shall include
24 both the methodology and the relative importance of all

25 significant factors to be used during competitive evaluation
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1 and for final selection. In any case, if price is included as
2 a primary or significant factor, the Government's evaluation
3 shall be based to the maximum extent practicable on the
4 total cost to meet the Federal need and not on the cost
5 of completing any initial or partial segments of activity.

6 (2) Any changes in the methodology or evaluation
7 factors which may affect the outcome of the competition
8 shall be promptly communicated to all competitors.

9 (c) To the maximum extent practicable, solicitations
10 shall set forth the public need in functional terms so as to
11 permit the application of a variety of technological ap-
12 proaches and elicit the most promising competing alterna-
13 tives. Solicitations shall not prescribe performance character-
14 istics based on a single approach. Solicitations shall also not
15 prescribe technical characteristics obtained from any poten-
16 tial competitor.

17 (d) If either the Government or an offeror identifies
18 inadequacies in the solicitation which cause misunderstand-
19 ings of the public's needs or requirements, clarification of
20 intent shall be made to all offerors in a timely fashion and on
21 an equal basis.

22 EVALUATION, AWARD, AND NOTIFICATIONS

23 SEC. 303. (a) Written or oral discussions shall be con-
24 ducted with all qualified offerors who remain in a competi-
25 tive range solely for the purpose of obtaining any needed

1 clarification or extension of offers. An initial offer may be
2 accepted without discussion.

3 (b) When awards are made for alternative approaches
4 selected on the basis of the factors contained in the solicita-
5 tion, whether for design, development, demonstration, or
6 delivery, to the maximum extent practicable, they shall be
7 sustained in competition until sufficient test or evaluation
8 information becomes available to narrow the choice to a
9 particular product or service.

10 (c) Until award is made, information concerning the
11 award shall not be disclosed to any person not having direct
12 source selection responsibilities.

13 (d) Award shall be made to one or more responsible
14 offerors whose proposal is most responsive to the factors stip-
15 ulated in the solicitation as required by section 302 (b). No-
16 tification of award to all unsuccessful offerors shall be made
17 with reasonable promptness.

18 SINGLE-SOURCE EXCEPTIONS

19 SEC. 304. (a) Compliance with the procedures pre-
20 scribed in sections 302 and 303 need not be continued if—

21 (1) the agency head makes a determination, before
22 award, that it is impracticable to proceed with the com-
23 petitive negotiation because more than one prospective
24 source is not available; a public exigency prevails; or a

1 national emergency is declared by the Congress or the
2 President;

3 (2) such determination, together with the reasons
4 therefor, is in writing and conforms with such regula-
5 tions as may be prescribed or authorized by the Office of
6 Federal Procurement Policy, pursuant to section 102
7 (a) (1) ; and

8 (3) notice of intent to award such a contract is
9 publicized in advance of the award, pursuant to section
10 637 (c) of title 15, United States Code, and includes
11 a description of the property or service to be acquired
12 and the name of the prospective source.

13 In such cases, contracts may be made by negotiation with
14 a single offeror selected by the Agency. The submission and
15 certification referred to in section 305 (b) and the provisions
16 of section 305 (c) shall be required in the case of any single-
17 source contract to be awarded pursuant to this section when
18 the amount in question is greater than the amount specified
19 in section 401:

20 (b) Where there is no commercial usage of the product
21 or service to be acquired under this section, and the Agency
22 head determines that substantial follow-on provision of such
23 product or service will be required by the Government, the
24 Agency head shall, when he deems appropriate, take action

1 through contractual provision, or otherwise, to provide the
2 Government with a capability to establish one or more other
3 competitive sources.

4 PRICE ANALYSIS AND COST DATA

5 SEC. 305. (a) Prior to any negotiated award, change,
6 or modification of any contract or subcontract, the con-
7 tractor and any subcontractor shall be required to submit
8 or identify in writing, with his proposal, price data bearing
9 on the reasonableness of the offer. Each such contractor
10 or subcontractor shall certify that, to the best of this knowl-
11 edge and belief, such price data is accurate, complete, and
12 current as of the date agreed upon between the parties
13 (which date shall be as close as practicable to the date of
14 agreement on the negotiated price). The contracting officer
15 shall use price analysis techniques to analyze and evaluate
16 the reasonableness of offers where—

17 (1) the price of the contract, subcontract, change
18 or modification is less than \$500,000; (the contracting
19 officer may at his discretion, however, request pricing
20 data or cost data as provided for in section 305 (b),
21 for contracts, subcontracts, changes or modifications,
22 where the total amount exceeds the amount specified
23 in section 401 of this Act but is less than or equal to
24 \$500,000) ; or

1 price of a commercial item sold in substantial quan-
2 tities to the general public; or

3 (3) the price is already set by law or regulation;
4 or

5 (4) negotiation is based on adequate price com-
6 petition, wherein price is a primary or significant
7 factor; or

8 (5) there was recent competitive purchase under
9 relatively similar circumstances.

10 (b) Where the contract or subcontract is a single-
11 source award pursuant to section 304, or for other nego-
12 tiated contracts when the contract or subcontract does not
13 meet any one of the conditions set forth in section 305 (a) —

14 (1) the contractor and any subcontractor shall be
15 required to submit or identify in writing, with his pro-
16 posal, cost data bearing on the reasonableness of the
17 offered price; and

18 (2) shall certify that, to the best of his knowledge
19 and belief, such cost data is accurate, complete and cur-
20 rent as of the date agreed upon between the parties
21 (which date shall be as close as practicable to the date
22 of agreement on the negotiated price).

23 (c) Any prime contract or change or modification
24 thereto under which a certification is required under sub-
25 section (b) shall contain a provision that the price to the

1 Government, including profit or fee, shall be adjusted to
2 exclude any significant sums by which it may be determined
3 by the Agency head that such price was increased because
4 the contractor or any subcontractor required to furnish such
5 a certificate, furnished data which was not accurate, com-
6 plete or current.

7 (d) The Agency head may grant a waiver from the pro-
8 visions of sections 305 (a) and (b). Such waiver shall in-
9 clude a written justification, to be placed in and made a part
10 of the contract file, setting forth the reasons why the provi-
11 sions of sections 305 (a) and (b) must be waived.

12 (e) At least every three years, beginning with the third
13 year after enactment of this Act, the Administrator of the
14 Office of Federal Procurement Policy shall review and may
15 revise the thresholds cited elsewhere in this section, or any
16 prior revision hereto, notwithstanding any other provision
17 of law, to reflect an increase or decrease by at least 10 per
18 centum in the costs of labor and materials. At least sixty
19 days in advance of its effective date, the Administrator shall
20 report to Congress any such revision which by itself, or cu-
21 mulatively with earlier increases, represents a 50 per centum
22 or more increase.

23 ACCESS TO RECORDS

24 SEC. 306. (a) Until expiration of three years after
25 final payment under a contract negotiated or amended under

1 this title, the Comptroller General of the United States and
2 an executive agency or their authorized representatives are
3 entitled to inspect the plants and examine any books, docu-
4 ments, papers, records or other data of the contractor and
5 his subcontractors that pertain to, and involve transactions
6 relating to the contract or subcontract or to the amendment
7 thereof, including for the purpose of evaluating the accuracy,
8 completeness and currency of data certified under section
9 305, all such books, records and other data relating to the
10 negotiation, pricing, or performance of the contract or sub-
11 contract. This provision may be waived for any contract
12 or subcontract with a foreign contractor or subcontractor,
13 if the Agency head determines, with concurrence of the
14 Comptroller General, that waiver would be in the public
15 interest.

16 (b) Inspections and examinations by executive agen-
17 cies under subsection (a) shall be conducted only when
18 necessary to insure contract performance. Multiple inspec-
19 tions and examinations of a contractor or subcontractors by
20 more than one executive agency shall be eliminated to the
21 maximum extent practicable by coordinating inspection
22 and examination responsibilities in accordance with regula-
23 tions to be issued or authorized by the Office of Federal
24 Procurement Policy pursuant to section 102(1).

1 TITLE IV—ACQUISITION BY COMPETITIVE
2 SMALL PURCHASE PROCEDURES METHOD
3 CRITERIA FOR USE

4 SEC. 401. (a) The competitive small purchase proce-
5 dures method may be used in the acquisition of property and
6 services under regulations authorized or prescribed by the
7 Office of Federal Procurement Policy under section 102 (1)
8 when the anticipated total contract price does not exceed
9 \$10,000 but, in lieu of this method, the contracting officer
10 may use either of the competitive methods prescribed in
11 titles II or III of this Act when such use would be more
12 advantageous to the Government.

13 (b) At least every three years, beginning with the
14 third year after enactment of this Act, the Administrator
15 of the Office of Federal Procurement Policy shall review
16 the prevailing costs of labor and materials and may revise
17 the amount stated in section 401 (a) or any prior revision
18 thereof, notwithstanding any other provision of law, to
19 reflect an increase or decrease by at least 10 per centum
20 in the costs of labor and materials. At least sixty days in
21 advance of its effective date, the Administrator shall report
22 to Congress any such revision which by itself, or cumula-
23 tively with earlier increases, represents 50 per centum or
24 more increase.

1 SOLICITATIONS AND AWARDS

2 SEC. 402. The Contracting officer may make an award
3 to the contractor whose offer is most advantageous to the
4 Government but shall seek to obtain effective competition
5 to the maximum extent practicable through informal means.

6 TITLE V—GENERAL PROVISIONS.

7 CONTRACT TYPES

8 SEC. 501. (a) Contracts may be of any type or combi-
9 nation of types, consistent with the degree of technical and
10 financial risk to be undertaken by the contractor, which will
11 promote the best interests of the Government except that the
12 cost-plus a percentage-of-cost system of contracting shall not
13 be used under any circumstances.

14 (b) The preferred contract form for all contracts shall
15 be a fixed-price type. Where the technical or financial risks
16 of negotiated contracts are substantial, fixed-price contracts
17 with options for shorter work increments are preferred to
18 longer cost-type contracts so as to maintain greater control
19 over Government obligations.

20 WARRANTEE AGAINST CONTINGENT FEES

21 SEC. 502. Each contract negotiated under title III of
22 this Act or an award to be made as a result of the submission
23 of a technical proposal under section 202 (c) of this Act shall
24 contain a warrantee by the contractor that no person or sell-

1 ing agency has been employed or retained to solicit or secure
2 the contract upon an agreement or understanding of a com-
3 mission, percentage, brokerage, or contingent fee, excepting
4 bona fide employees or bona fide established commercial or
5 selling agencies maintained by the contractor for the pur-
6 pose of securing business; and that for any breach or viola-
7 tion of the warrantee, the Government may annul the con-
8 tract without liability or deduct from the contract price or
9 consideration the full amount of the commission, percentage,
10 brokerage, or contingent fee.

11 CANCELLATIONS AND REJECTIONS

12 SEC. 503. (a) Where the contracting officer determines
13 that it is in the best interest of the Government, the con-
14 tracting officer may—

15 (1) withdraw a small purchase order prior to the
16 consummation of a contract;

17 (2) cancel an invitation for sealed bids before bid
18 opening or after bid opening but before award; or

19 (3) cancel a request for proposal and reject all
20 offers.

21 (b) When requested, the contracting officer shall fully
22 inform any unsuccessful offeror or bidder of the reasons for
23 the rejection of his offer or bid.

1 MULTIYEAR CONTRACTS

2 SEC. 504. (a) Except as otherwise provided by law,
3 an agency may make contracts for acquisition of property
4 or services for periods not in excess of five years, when
5 appropriations are available and adequate for payment for
6 the first fiscal year and the Agency head determines that—

7 (1) the Government need for the property or
8 services being acquired over the period of the contract
9 is reasonably firm and continuing; and

10 (2) such a contract will serve the best interests of
11 the United States by encouraging effective competition
12 or promoting economies in performance and operation.

13 (b) The Administrator of the Office of Federal Pro-
14 curement Policy may grant exceptions to the five year
15 limitation imposed by subsection (a) upon the certification,
16 in such form and of such content as the Administrator may
17 require, by the Agency head that such exception is in the
18 best interests of the Government. A copy of each such
19 certification and each exception granted shall be delivered
20 to the chairman of the Committee on Government Opera-
21 tions and the Committee on Appropriations of the House
22 of Representatives and the Senate, respectively.

23 (c) Any cancellation costs incurred must be paid from

1 appropriated funds originally available for performance of
2 the contract, or currently available for procurement of similar
3 property or services, and not otherwise obligated, or appro-
4 priations made available for such payments.

5 ADVANCE, PARTIAL, AND PROGRESS PAYMENTS

6 SEC. 505. (a) Any executive agency may—

7 (1) make advance, partial, progress, or other pay-
8 ments under contracts; and

9 (2) insert in solicitations a provision limiting ad-
10 vance or progress payments to small business concerns.

11 (b) Advance payments under subsection (a) shall not
12 be made in excess of the amount required for contract per-
13 formance and shall not exceed the unpaid contract price.

14 (c) When progress payments are made, the Govern-
15 ment shall have title to the progress payment inventory and,
16 notwithstanding any other provisions of law, that title may
17 not be divested by any action of the contractor, or proceed-
18 ing in bankruptcy, or encumbered by any lien or security
19 interest.

20 (d) Advance payments under subsection (a) may be
21 made only upon adequate security and a determination by
22 the Agency head that to do so would be in the public inter-
23 est. Such security may be in the form of a lien in favor of
24 the Government on the property contracted for, on the bal-

25 ance in an account in which such payments are deposited,
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1 or on such property acquired for performance of the contract
2 as the parties may agree. This lien shall have priority over
3 all other liens.

4 REMISSION OF LIQUIDATED DAMAGES

5 SEC. 506. Upon the recommendation of the Agency
6 head the Comptroller General of the United States may
7 remit all or part, as he considers just and equitable, of any
8 liquidated damages provided by the contract for delay in
9 performing the contract.

10 DETERMINATIONS AND FINDINGS

11 SEC. 507. (a) Determinations, findings, and decisions
12 provided for by this Act may be made with respect to con-
13 tracts individually or with respect to classes of contracts.

14 (b) Each determination or decision shall be based upon
15 written findings of the officer making the determination or
16 decision, and shall be retained in the official contract file.

17 COMPETITIVE BIDDING INFORMATION

18 SEC. 508. (a) If the contracting officer or any other
19 agency employee has reason to believe that any bid, pro-
20 posal or offer evidences a violation of the antitrust laws or
21 provisions of this Act, he shall refer that bid, proposal or
22 offer through the appropriate agency official, directly to the
23 Attorney General of the United States for appropriate
24 action.

25 (b) Upon the request of the Attorney General of the
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1 United States, the Agency head shall make available to the
2 Attorney General information which the Attorney General
3 considers necessary and relevant to any investigation, prose-
4 cution or other action by the United States under the anti-
5 trust laws or other statute enforced by the Attorney General.

6 (c) The Agency head shall render needed assistance to
7 the Attorney General in any investigation and prosecution
8 flowing from the information provided in subsection (a)
9 or (b) or from other investigation and prosecution in other
10 antitrust matters.

11 GOVERNMENT SURVEILLANCE REQUIREMENTS

12 SEC. 509. (a) Notwithstanding any other provision of
13 law, an agency head may grant a waiver from Government
14 surveillance requirements for a period not to exceed two
15 years to that part of a contractor's operation which is sep-
16 arately managed and accounted for if more than 75 per cen-
17 tum of the business activity of that part of a contractor's
18 operation as measured by total sales volume, is being con-
19 ducted under commercial and competitive Government con-
20 tracts, where the Government awarded firm fixed-price
21 type contracts or where price was the deciding or a signifi-
22 cant factor for award.

23 (b) Such a waiver shall relieve that contractor profit
24 center from Government, but not General Accounting Of-

25 fice surveillance requirements including:

1 (1) agency management, procurement system and
2 property reviews;

3 (2) determinations of the reasonableness of indi-
4 rect overhead costs;

5 (3) provisions of the Cost Accounting Standards
6 Act (Public Law 93-379) ;

7 (4) advance agreements for independent research
8 and development and bid and proposal activities; and

9 (5) provisions of the Renegotiation Act.

10 (c) Such a waiver shall not be granted, and may be
11 revoked at any time, if the Agency head determines that,
12 for other reasons, the combination of commercial and Gov-
13 ernment competitive activity is insufficient to insure efficient
14 contractor activity under Government contracts.

15 MAINTENANCE OF REGULATIONS

16 SEC. 510. (a) Notwithstanding the provisions of title
17 VIII of this Act, or any other provisions of law, regulations,
18 including amendments thereof approved pursuant to sub-
19 section (b), relating to Federal procurement as determined
20 by the Administrator of the Office of Federal Procurement
21 Policy, promulgated or in effect one hundred and eighty days
22 before the date of enactment of this Act shall remain in ef-
23 fect until repealed by order of the Administrator of the
24 Office of Federal Procurement Policy or until the lapse of
25 two years after the date of enactment of this Act, whichever

1 is earlier. No regulation preserved by operation of this sec-
2 tion may be amended without the prior approval of the Ad-
3 ministrator of the Office of Federal Procurement Policy.

4 (b) The Administrator of the Office of Federal Pro-
5 curement Policy is authorized to approve the amendment of
6 regulations preserved under the provisions of subsection (a).

7 TITLE VI—DELEGATION OF AUTHORITY

8 DELEGATION WITHIN AN EXECUTIVE AGENCY

9 SEC. 601. Each agency head may delegate any author-
10 ity under this Act except the authority to grant waivers
11 under section 509, provided that the authority to make
12 determinations under sections 202 and 304 through 306
13 shall not be delegated below the level of the head of a
14 procuring activity.

15 JOINT ACQUISITIONS

16 SEC. 602. (a) To facilitate acquisition of property or
17 services by one executive agency for another executive
18 agency, and to facilitate joint acquisition by those agencies—

19 (1) the Agency head may, within his agency,
20 delegate functions and assign responsibilities relating
21 to the acquisition;

22 (2) the heads of two or more executive agencies
23 may by agreement delegate acquisition functions and
24 assign acquisition responsibilities from one agency to

1 another of those agencies or to an officer or civilian
2 employee of another of those agencies; and

3 (3) the heads of two or more executive agencies
4 may create joint or combined offices to exercise acquisi-
5 tion functions and responsibilities.

6 (b) Subject to the provisions of section 686 of title 31,
7 United States Code—

8 (1) appropriations available for acquisition of
9 property and services by an executive agency may
10 be made available for obligation for acquisition of
11 property and services by any other agency in amounts
12 authorized by the head of the ordering agency and
13 without transfer of funds on the books of the Depart-
14 ment of the Treasury;

15 (2) a disbursing officer of the ordering agency may
16 make disbursement for any obligation chargeable under
17 subsection (a) of this section, upon a voucher certified
18 by an officer or civilian employee of the acquisition
19 agency.

20 TITLE VII—PROTESTS

21 PURPOSE

22 SEC. 701. In accordance with the authority of the
23 Budget and Accounting Act of 1921 (chapter 18, title III,
24 section 304, 42 Stat. 24, 31 U.S.C. 44) and this title,

1 protests shall be decided in the General Accounting Office.
2 To the fullest extent possible, the Comptroller General shall
3 provide for the inexpensive, informal, and expeditious res-
4 olution of protests.

5 JURISDICTION

6 SEC. 702. (a) The Comptroller General shall have
7 authority to decide any protest submitted by an interested
8 party in accordance with rules and regulations he shall issue
9 pursuant to section 704.

10 (b) No contract shall be awarded after the contracting
11 activity has received notice of a protest to the Comptroller
12 General while the matter is pending before him: *Provided*,
13 *however*, That the head of an executive agency may author-
14 ize the award of a contract notwithstanding such protest,
15 upon a written finding that the interest of the United States
16 will not permit awaiting the decision of the Comptroller
17 General: *And provided further*, That the Comptroller is
18 advised prior to the award of such finding.

19 (c) With respect to any solicitation, proposed award,
20 or award of contract protested to him in accordance with this
21 title, the Comptroller General is authorized to declare that
22 such solicitation, proposed award, or award does not com-
23 port with law or regulation. If award has been made prior
24 to such declaration the Comptroller General may further

1 declare that the contract shall be terminated for the con-
2 venience of the Government.

3 PROCEEDINGS

4 SEC. 703. (a) Proceedings shall be informal to the
5 fullest extent possible.

6 (b) Each decision of the Comptroller General shall be
7 signed by him or his delegee and shall be binding upon all
8 interested parties including the executive agency or agencies
9 involved. A copy of the decision shall be furnished to the
10 interested parties and the executive agency or agencies
11 involved.

12 (c) (1) All decisions shall be rendered promptly, con-
13 sistent with the need to develop a complete record, in ac-
14 cordance with regulations to be issued by the Comptroller
15 General pursuant to section 704 of this title.

16 (2) There shall be no ex parte proceedings before the
17 Comptroller General except that this section shall not be
18 deemed to preclude informal contacts with the parties for
19 procedural purposes.

20 (3) A conference shall be permitted before decision;
21 however, no transcripts shall be required. Transcripts may
22 be permitted at the Comptroller General's discretion or at
23 the request of the interested party, provided the Comptroller
24 General and each other interested party shall be furnished

1 a copy. Costs of such transcripts and services shall be borne
2 by the requesting party.

3 (4) The Comptroller General shall, for good cause
4 shown, authorize formal discovery proceedings and may
5 sign and issue subpoenas requiring the production of
6 books and records and attendance of witnesses for the
7 taking of evidence. In case of refusal to obey a subpoena
8 by a person who resides, is found, or transacts business
9 within the jurisdiction of a United States district
10 court, the court, upon application of the Comptroller
11 General, shall have jurisdiction to issue the person an
12 order requiring him to appear before the Comptroller
13 General or his designee to produce the books and rec-
14 ords, or to give testimony, or both. Any person who fails
15 to obey the order of the court may be punished by the
16 court as a contempt thereof.

17 (d) The Comptroller General is authorized to dismiss
18 any protest he determines to be frivolous or which, on its
19 face, does not state a valid basis for protest.

20 (e) Where the Comptroller General has declared that
21 solicitation, proposed award, or award of a contract does
22 not comport with law or regulation, he may further declare
23 the entitlement of an appropriate party to bid and proposal
24 preparation costs. In such cases the Comptroller General
25 may remand the matter to the executive agency involved

1 for an initial determination as to the amount of such costs.
2 Declarations of entitlement to monetary awards shall be
3 paid promptly by the executive agency concerned out of
4 funds available for the purpose of the procurement or sale.

5 (f) The Comptroller General, where he deems appro-
6 priate, shall make recommendations for improving the pro-
7 curement process.

8 GENERAL PROVISIONS

9 SEC. 704. The Comptroller General shall perform such
10 acts, make such rules and regulations, and issue such orders,
11 not inconsistent with this title, as may be necessary in the
12 execution of the protest decision function. He may delegate
13 his authority to other officers or employees of the General
14 Accounting Office.

15 TITLE VIII—AMENDMENTS AND REPEALS

16 AMENDMENTS

17 SEC. 801. (a) The Agriculture Department Appropria-
18 tion Act, 1923, is amended by striking out “, after due ad-
19 vertisement and on competitive bids,” in the first proviso
20 on the page at forty-second Statutes at Large, page 517
21 (7 U.S.C. 416).

22 (b) Sections 101 (d) and 104 of the Department of
23 Agriculture Organic Act of 1944 (58 Stat. 734, 736; 7
24 U.S.C. 430, 432) are amended by striking out “in the open
25 market”.

1 (c) Section 2356 (b) of title 10, United States Code,
2 is amended by striking out the last sentence.

3 (d) Sections 4504 and 9504 of title 10, United States
4 Code, are each amended by striking out everything after
5 "United States" and inserting in lieu thereof a period.

6 (e) Sections 4505 and 9505 of title 10, United States
7 Code, are each amended by striking out the second sentence.

8 (f) Clause (2) of section 502 (c) of the Act of August
9 10, 1948 (62 Stat. 1283; 12 U.S.C. 1701c (b) (2)), is
10 amended by striking out ", without regard to section 3709
11 of the Revised Statutes".

12 (g) Section 502 (c) of the Act of December 31, 1970
13 (84 Stat. 1784; 12 U.S.C. 1701z-2 (c)), is amended by
14 striking out ", without regard to section 3709 of the Revised
15 Statutes,".

16 (h) Section 708 (h) of the Act of June 27, 1934, as
17 amended August 10, 1948 (62 Stat. 1279; 12 U.S.C. 1747
18 g (h)), is amended by striking out the proviso at the end.

19 (i) Section 712 of the Act of June 27, 1934, as
20 amended August 10, 1948 (62 Stat. 1281; 12 U.S.C.
21 1747k) is amended by striking out "and without regard
22 to section 3709 of the Revised Statutes".

23 (j) Section 208 (b) of the Act of June 26, 1934, as
24 amended October 19, 1970 (84 Stat. 1014; 12 U.S.C.
25 1788 (b)), is amended by striking out the last sentence.

1 (k) Clause (4) of section 2 (b) of the Act of July 18,
2 1958 (72 Stat. 386; 15 U.S.C. 634 (b) (4)), is amended
3 by striking out: "Section 3709 of the Revised Statutes, as
4 amended (41 U.S.C., section 5), shall not be construed
5 to apply to any contract of hazard insurance or to any pur-
6 chase or contract for services or supplies on account of prop-
7 erty obtained by the Administrator or as a result of loans
8 made under this Act if the premium therefor or the amount
9 thereof does not exceed \$1,000."

10 (l) Section 3 of the Act of April 24, 1950 (64 Stat.
11 83; 16 U.S.C. 580c), is amended to read as follows:

12 "SEC. 3. The Forest Service is authorized to make
13 purchases of (1) materials to be tested or upon which
14 experiments are to be made or (2) special devices, test
15 models, or parts thereof, to be used (a) for experimenta-
16 tion to determine their suitability for or adaptability to
17 accomplishment of the work for which designed or (b) in
18 the designing or developing of new equipment: *Provided*,
19 That not to exceed \$50,000 may be expended in any one
20 fiscal year pursuant to this authority and not to exceed
21 \$10,000 on any one item or purchase."

22 (m) Section 2 (b) (1) of the Act entitled "An Act to
23 authorize the construction of a National Fisheries Center
24 and Aquarium in the District of Columbia and to provide for
25 its operation", approved October 9, 1962 (76 Stat. 753;

1 16 U.S.C. 1052), is amended by striking out “, without
2 regard to the provisions of section 3709 of the Revised
3 Statutes of the United States (41 U.S.C. 5),”.

4 (n) Subsections 2(a)(1) and 2(b)(1) of the Act of
5 July 26, 1954 (79 Stat. 44; 20 U.S.C. 331a (a)(1), (b)
6 (1), are amended by striking out any references to section
7 3709 of the Revised Statutes and to section 5 of title 41,
8 United States Code.

9 (o) Section 224(a) of the Act of November 8, 1965
10 (79 Stat. 1228; 20 U.S.C. 1034(a)), is amended by strik-
11 ing out “, and, without regard to section 3709 of the Revised
12 Statutes (41 U.S.C. 5),”.

13 (p) Section 7 of the Act of December 20, 1945, as
14 amended October 10, 1949 (59 Stat. 621; 22 U.S.C. 287e),
15 is amended by striking out “, all without regard to section
16 3709 of the Revised Statutes, as amended (41 U.S.C. 5)”.

17 (q) Section 707 of the Act of August 13, 1946 (60
18 Stat. 1019; 22 U.S.C. 1047), is amended by striking out
19 “, without regard to section 3709 of the Revised Statutes”.

20 (r) Section 22(e)(7) of the Act of December 29,
21 1970 (84 Stat. 1613, 29 U.S.C. 671(e)(7)), is amended
22 by striking out “, and without regard to section 3709 of the
23 Revised Statutes, as amended (41 U.S.C. 5), or any other
24 provision of law relating to competitive bidding.”

25 (s) Section 6(b) of the Act of August 31, 1954 (68

1 Stat. 1010; 30 U.S.C. 556 (b)), is amended by striking out
2 "and without regard to the provisions of section 3709, Re-
3 vised Statutes (41 U.S.C. 5)".

4 (t) Section 1820 (b) of title 38, United States Code,
5 is amended by striking out "section 5 of title 41" and in-
6 serting in lieu thereof the "Federal Acquisition Act of
7 1977" and by deleting "if the amount of such contract
8 exceeds \$1,000."

9 (u) Section 5002 of title 38, United States Code,
10 is amended by substituting a period for the comma after
11 "work" and striking out the remainder of the section.

12 (v) The Act of October 10, 1940, as amended (54
13 Stat. 109; 41 U.S.C. 6a, b(a), (c), (d)), is amended
14 by striking out section 2 and subsections (c) and (d), and
15 by striking out "without regard to the provisions of sec-
16 tion 3709 of the Revised Statutes, as amended," in sub-
17 section (a). The Act of July 27, 1965 (79 Stat. 276; 41
18 U.S.C. 6a-1) is amended by striking out any and all ref-
19 erences to section 3709 of the Revised Statutes in the
20 sections relating to Architect of the Capitol.

21 (w) Section 11 of the Act of June 30, 1936 (49
22 Stat. 2039, renumbered section 12 in 66 Stat. 308; 41
23 U.S.C. 45), is amended to read as follows:

24 "SEC. 12. The provisions of this Act requiring the
25 inclusion of representations with respect to minimum wages

1 shall apply only to purchases or contracts relating to such
2 industries as have been the subject matter of a determina-
3 tion by the Secretary of Labor.”.

4 (x) Section 356 (b) of the Act of July 1, 1944, as
5 added October 18, 1968 (82 Stat. 1175; 42 U.S.C. 163d
6 (b)), is amended by striking out the references to section
7 3709 of the Revised Statutes and 41 U.S.C. 5 in clause (3),
8 and by striking out the parenthetical phrase “by negotiation
9 or otherwise)” in clause (4) .

10 (y) Section 1 (b) of the Act of October 14, 1940 (54
11 Stat. 1126; 42 U.S.C. 1521 (b)), is amended by striking
12 out the reference to section 3709 of the Revised Statutes in
13 the first parenthetical phrase, and by striking out the first
14 proviso.

15 (z) Section 202 (b) of the Act of October 14, 1940 (55
16 Stat. 362; 42 U.S.C. 1532 (b)), is amended by striking out
17 the reference to section 3709 of the Revised Statutes.

18 (aa) Section 309 of the Act of September 1, 1951 (65
19 Stat. 307; 42 U.S.C. 1592h) is amended by striking out
20 clause (a), and amending clause (b) to read as follows:

21 “(b) the fixed-fee under a contract on a cost-plus-a-
22 fixed-fee basis shall not exceed 6 per centum of the esti-
23 mated cost;”.

24 (bb) Sections 103 (b) (4) and 104 (a) (2) of the Act
25 of July 14, 1955, as amended November 21, 1967 (81

1 Stat. 486, 487; 42 U.S.C. 1857b (b) (4), b-1 (a) (2)), is
2 amended by striking out the references to section 3709 of
3 the Revised Statutes and to section 5 of title 41, United
4 States Code.

5 (cc) Section 31 (b) of the Atomic Energy Act of 1954
6 (68 Stat. 927; 42 U.S.C. 2051c) is amended to read as
7 follows:

8 “(b) The Commission may make available for use in
9 connection with arrangements made under this section such
10 of its equipment and facilities as it may deem desirable.”.

11 (dd) Section 41 (b) of the Atomic Energy Act of
12 1954 (68 Stat. 928; 42 U.S.C. 2061 (b)), is amended
13 by striking out the two sentences immediately preceding
14 the last sentence in this section.

15 (ee) Section 43 of the Atomic Energy Act of 1954
16 (68 Stat. 929; 42 U.S.C. 2063), is amended by striking
17 out the following: “without regard to the provisions of sec-
18 tion 3709 of the Revised Statutes, as amended, upon certifi-
19 cation by the Commission that such action is necessary in
20 the interest of the common defense and security, or upon a
21 showing by the Commission that advertising is not reason-
22 ably practicable. Partial and advance payments may be
23 made under contracts for such purposes.”.

24 (ff) Section 66 of the Atomic Energy Act of 1954 (68
25 Stat. 933; 42 U.S.C. 2096), is amended by striking out

1 the following: "Any purchase made under this section may
2 be made without regard to the provisions of section 3709
3 of the Revised Statutes, as amended, upon certification by
4 the Commission that such action is necessary in the interest
5 of the common defense and security, or upon a showing by
6 the Commission that advertising is not reasonably prac-
7 ticable. Partial and advance payments may be made under
8 contracts for such purposes."

9 (gg) Section 203 (e) of the Act of April 3, 1970
10 (84 Stat. 115; 42 U.S.C. 4372 (e)), is amended by strik-
11 ing out the references to section 3709 of the Revised
12 Statutes and to section 5 of title 41, United States Code.

13 (hh) Section 703 of the Act of June 29, 1936 (49
14 Stat. 2008; 46 U.S.C. 1193), is amended by striking out
15 subsection (a), by striking out "For the construction, re-
16 construction, or reconditioning of vessels, and" in subsec-
17 tion (c), and by renumbering subsections (b) and (c)
18 as (a) and (b), respectively.

19 (ii) Section 8 (a) of the Act of September 30, 1965
20 (79 Stat. 894; 49 U.S.C. 1638 (a)), is amended by
21 striking out the references to section 4709 of the Revised
22 Statutes and to section 5 of title 41, United States Code,
23 in paragraph (1), and by striking out paragraph (3).

24 (jj) Section 5012 of title 38, United States Code, is

1 amended by striking out the second sentence in subsection
2 (a) and all of subsection (c).

3 REPEALS

4 SEC. 802. The following statutes or provisions of
5 statutes are repealed.

6 Chapters 135 and 137 and sections 2306, 4535, 4540,
7 7212, 9535, and 9540 of title 10, United States Code; sec-
8 tion 7 of the Act of May 18, 1938 (52 Stat. 406; 16 U.S.C.
9 833f); section 7 of the Act of March 3, 1875, as amended
10 (18 Stat. 450; 25 U.S.C. 96); section 3 of the Act of
11 August 15, 1876 as amended (19 Stat. 199; 25 U.S.C.
12 97); sections 602 (d) (3) and 602 (d) (10) of the Fed-
13 eral Property and Administrative Services Act as amended
14 (40 U.S.C. 474 (3), (10)); sections 10 (a) and 10 (b) of
15 the Act of September 9, 1959 (73 Stat. 481; 40 U.S.C.
16 609 (a), (b)); 41 U.S.C. 5; section 2 of the Act of Octo-
17 ber 10, 1940, as amended October 31, 1951 (54 Stat. 1110;
18 41 U.S.C. 6a); sections 3710 and 3735 of the Revised
19 Statutes (41 U.S.C. 8, 13); section 3653 of the Revised
20 Statutes, as amended by the Act of July 7, 1884 (23 Stat.
21 204; 41 U.S.C. 24); title III of the Federal Property and
22 Administrative Services Act of 1949 as amended; 41 U.S.C.
23 254 (b); section 10 (a) of the Act of September 5, 1950
24 (64 Stat. 591; 41 U.S.C. 256a); section 510 (a) of the

1 Act of July 15, 1949 (63 Stat. 437; 42 U.S.C. 1480 (a)) ;
2 section 6 (e) of the EURATOM Cooperation Act of 1958
3 (72 Stat. 1085; 42 U.S.C. 2295 (c)) ; section 1345 (b) of
4 the Act of August 1, 1968 (82 Stat. 585; 42 U.S.C. 4081
5 (b)) ; section 404 of the Act entitled "An Act to author-
6 ize appropriations during the fiscal year 1969 for procure-
7 ment of aircraft, missiles, naval vessels, and tracked combat
8 vehicles, research, development, test, and evaluation for the
9 Armed Forces, and to prescribe the authorized personnel
10 strength of the Selected Reserve of each Reserve component
11 of the Armed Forces, and for other purposes, approved,
12 September 20, 1969 (82 Stat. 849) .

95TH CONGRESS
2d SESSION
H. R. 10749

A BILL

To provide policies, methods, and criteria for
the acquisition of property and services by
executive agencies.

By Mr. WYDLER

FEBRUARY 2, 1978

Referred to the Committee on Government Operations